

# Challenges for EU Police Cooperation in the Areas of Data Protection and Modern Technology & Smart Policing

CEPOL Conference | Smart Policing in Smart Cities  
Ghent | 27 November 2013

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# Data protection

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## LE information exchange within the EU

- within respective MS
- between MS
- between EU bodies/agencies and 3<sup>rd</sup> countries/organisations
- between MS and 3<sup>rd</sup> countries

## traditional purpose LE work: criminal justice-oriented

- traditionally: by & between judicial police & justice actors
- vs administrative-governmental-military-political purpose
  - including intelligence activity

## key principles/notions

- purpose limitation/specialty (distinction various LE uses)
- adequacy 3<sup>rd</sup> country/organisation data protection regime

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# EU (pre-Lisbon)

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directive 95/46/EC (Article 29 Working Party, Council of the EU)

- Article 3: non-applicable to police/justice/criminal law (3<sup>rd</sup> pillar)
- 1<sup>st</sup> pillar (commercial, 3<sup>rd</sup> party) data, but relevant for LE
- EU agreed to US Safe Harbour System (self-regulation)

framework decision 2008/977 data protection 3<sup>rd</sup> pillar

- existing specific regimes/agreements (Europol, Schengen, ...) unaffected
- only limited guarantees for further (vs MS' own) transfer to 3<sup>rd</sup> states
- assessment adequate data protection level: per MS (full discretion)

other 'realisations' (not data protection specific; non-exhaustive)

- 2000 EU MLA Convention (telecom interception, UK exemption)
- blurring of boundaries between different purposes (Europol, SISII, VIS, etc)
- OLAF investigations
- data retention telecom data, EU-PNR + 2006 & 2009 ECJ cases

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# EU (post-Lisbon)

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## data protection as a subjective right

- Article 8 EU Fundamental Rights Charter
- Article 16 TFEU
  - requires adoption of new rules for processing personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law

## consequence: 2012 data protection reform package

- directive 95/46 to be replaced by generally binding regulation
- framework decision to be replaced with directive, which must also cover
  - domestic information exchange
  - transfer own information to 3<sup>rd</sup> states
- non-data-protection specific instruments unaffected

# US | Impact on EU-US relationship?

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## US internally

- inadequacy data protection level neglected
  - inter-agency-sharing, all-purpose use, administrative subpoenas
- Foreign Intelligence Security Act
  - warrantless data capturing broadened by Patriot Act changes
- Safe Harbour not checked/assessed by individual MS + BCR's

## no genuine impact on EU-US relationship

- EU-US MLA Convention - Europol-US Agreement - Eurojust-US Agreement
- PNR EU-US
- Swift, TFTP2/Europol

## High Level Contact Group – Stockholm (2009) – EU-US AFSJ?

## December 2010 – now

- pending negotiation of EU-US Umbrella Agreement for LE purposes

# EU in relation to US+ (post-Snowden)

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Snowden: no real surprises, but

- bypassing of official EU-US agreements (e.g. Swift)
  - magnitude of intelligence services-led espionage practice (NSA, GCHQ)
- political consequences for EU policy making (trade agreement pending)
- general political awakening (finally) + especially Reding envisages changes
    - data protection = fundamental right; no bargaining; no price to be paid
    - Evaluation 'Safe Harbour' announced end '13
    - self-regulation (including BCR's) insufficient
    - extra guarantees for EU citizens' data in US ('judicial redress')
  - further logical consequences? (revision PNR, Europol-US agreement, EU-US MLA agreement, TFTP2 ...)
  - consequences for Five-Eyes intelligence community (including UK)?
  - credibility of Europol-moderated EPCC (Sep '13) recommendations?

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# EPCC's recommendations on data protection | 1

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distinction criminal justice/public security police work inopportune

- especially when unclear whether criminal offence/public security threat
- vs purpose limitation/separation of powers?
- vs EDPS: total exemption directive for national security problematic

fears hindrances relation police (directive) & private sector (regulation)

- undeveloped argument
- vs EDPS: more clarity needed about LE-private sector exchanges

specification of use conditions between MS not allowed

- vs plea for dropping dividing line between criminal justice/public security
- vs hollow purpose limitation clauses in agreements
- quid trust between MS?
- vs absence of distinction between different criminal justice/LE purposes
  - especially relevant for smart technology (examples: (ANPR) camera use)

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# EPCC's recommendations on data protection | 2

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processing sensitive data categories prohibited; exemptions incomplete

- 'screening of bulk DNA not allowed'

negative effect on current cooperative relationships with DPA's

- afraid of antagonistic relationship, of DPA's with teeth

imposes severe and unnecessary limitations on international police information exchange

- vs EDPS, criticizing adequacy exemption whereby controller may conclude that appropriate safeguards are in place

affects MS' sovereignty to manage their external relations

- 'should be to MS, on a case-by-case basis, irrespective of adequacy decision, to decide whether a transfer is justified'
- alignment of MS' int'l agreements with standards directive 'unworkable'

EPCC solution: involvement of LE authorities in data protection work ...

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# Modern technology & smart policing

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## EPCC recommendations (Sep '13) on modern technology

- way beyond smart policing (still relevant context)
- increasing influence on criminal activities & police work
- plea for technology 'foresight', ideally including establishment of so called 'technology radar' ( BKA 2012)
- police confronted with challenge to analyse huge amounts of data (big data): development of enhanced retrieval methods to be given high priority + sharing best practices between LE & private sector
  - learning from Google, Facebook etc?, rather question relative successes with big data analysis, start with introducing reciprocity from US concerning financial transactions?
- augmented reality etc: info 'sharing' (sic) between LE & citizens crucial
- scenario-based thinking (good ex: EC3 exercise)
- strengthen position LE towards technology suppliers (suggestion hereafter)

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# Galileo PRS (secure service)

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typical example where LT foresight should focus on (vs lack of interest)

public regulated service: more robust signal, anti-jamming features

for governmental use only

independence from US GPS-system (cfr US Glonass reluctance)

typical clients (2002 Galileo report!)

- trans-European level: LE (Europol, OLAF, etc)
- MS levels: LE, customs, intelligence services

location-based services | integration of accurate positioning signal  
receivers within tablets, smartphones, laptops, vehicles

enormous amount of traffic data held by providers, app designers

RFID satellite tracking enabled? (containers etc)

# Galileo PRS | proposed project

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initial proposal 2004 - EPCC modern technology foresight group uninterested  
huge academic project ambition (2014 and following)

- functional (potential) needs analysis Galileo system for LE user groups
  - potential needs: trans-border tracking/observation, speed monitoring, monitoring drive and rest regulations, trans-border electronic monitoring convicted persons, control illegal container shipping, illegal carousels, detection ship pollution, etc
- identification LE-specific data protection & security requirements of PRS
- drafting international/EU legal framework for PRS use by MS/EU LE bodies

cooperation

- academia: law (criminal, international public, EU, data protection, air & space law), criminology, (air & space) engineering, road traffic economy
- potential user communities/stakeholders: police, investigating & prosecuting officials both at MS/EU level, including Europol, OLAF, Tispol, Railpol/Aquapol, Frontex/Eurosur, Europris

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